IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 16.07.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.R.C.No.582 of 2004

Prabhavathi .. Petitioner/ PW1

Vs.

1.State by
The Sub-Inspector of Police,
Kudavasal Police Station,
Thiruvarur District.

2.Balasubramanian
3.Rethanakumar .. Respondents/
Respondents/ Accused 1 & 2

Prayer:- This revision filed u/s 397 & 401 of Cr.PC has been preferred against the judgment dated 31.12.2003 made in C.C.No.32 of 2002 on the file of the Judicial Magistrate, Thiruvarur.

For Petitioner :Mr.S.Senthilnathan

For Respondents :Mr.V.R.Balasubramanian (for R1)
Additional Public Prosecutor

Mr.T.R.Ravi (for R2 & R3)
(Legal Aid Counsel)

JUDGMENT

This revision has been preferred against the judgment in C.C.No.32 of 2002 on the file of the Judicial Magistrate, Thiruvarur.

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2.The short facts of the case of the prosecution is that on 18.08.2001 at about 5.00 pm the accused have abused P.W.1 and P.W.2 in filthy language on the score that their sheeps were allowed to graze in their land and that both A1 and A2 have assaulted P.W.1 & P.W.2 with aruval causing simple injuries on the left eye brow and left elbow of P.W.1 and on the left eye brow and left shoulder of P.W.2.

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3.After taking cognizance of the offence, the learned Judicial Magistrate had issued summons to the accused and on their appearance, the learned Judicial Magistrate furnished copies under Section 207 of Cr.P.C., to the accused and when the charge levelled against them were explained and questioned, they pleaded not guilty. On the side of the prosecution, P.W.1 to P.W.8 were examined and Ex.P.1 to Ex.P.6 were marked.

4.P.W.1 is an injured. According to her, on the date of occurrence at about 5.30 pm the accused abused her in filthy language and A2 had assaulted her, by holding her tuft, with an aruval on the left eye brow and also on the left elbow causing simple injuries and on her distress call P.W.2-Renuka, her elder sister, came to her rescue and at that time A1 has assaulted P.W.1 on her left eye brow and also on her left shoulder causing simple injuries.

5.P.W.2, another injured, has also corroborated the evidence of P.W.1. According to her, at the time of occurrence, both the accused had abused her in filthy language and A2 had assaulted P.W.1 with aruval on her left elbow and when she rushed to the rescue of her sister P.W.1, A1 had assaulted her (P.W.2) with an aruval on her left eye brow and also on the left shoulder causing simple injuries.

6.P.W.3 is the mother of P.W.1 & P.W.2. She is not an eye witness to the occurrence. She had rushed to the place of occurrence only after the occurrence. But she would depose that the accused while they were retrieving, criminally intimidated her.

7.P.W.4 & P.W.5 are also not eye witnesses to the occurrence.

8.P.W.6 is the Doctor, who had examined P.W.2-Renuka on 18.8.2001 at about 7.30 pm and had issued Ex.P.2-copy of the accident register. He had seen a lacerated injury on the left shoulder of P.W.2 measuring 4 x 1 x 0.5 cm, and another stab injury on the left side of the fore head measuring 1 x 0.5 x 0.5 cms and also another stab injury on the left elbow measuring 0.5 x 0.5 cm. He has also examined P.W.1-Prabhavathi for the injuries she had sustained on the same date and issued Ex.P.3-copy of the accident register, which shows that P.W.1 had sustained a cut injury on the left fore-arm measuring 6 x 0.5 x 0.5 cm.

9.P.W.7 is the witness in Ex.P.4-observation mahazar.

10.P.W.8 is the Investigating Officer, who had registered the case under Cr.No.208 of 2001 under section 294(b), 324 & 506(ii) IPC. Ex.P.5 is the copy of the FIR. Ex.P.6 is the rough sketch drawn by him. He has examined the witnesses and recorded their

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statements. After completing the formalities, he has filed the charge sheet against the accused on 4.10.2001.

11.When incriminating circumstances were put to the accused under Section 313 of Cr.P.C., the accused denied their complicity with the crime. The accused have not examined any witness on their side. After going through the evidence both oral and documentary, the learned trial Judge has held that the charges levelled against the accused have not been proved beyond any reasonable doubt and accordingly, acquitted the accused under Section 248(1) of Cr.P.C. Aggrieved by the findings of the learned trial Judge, P.W.1-Prabhavathi, injured, has preferred this revision.

12.Heard the learned counsel appearing for the revision petitioner Thiru.Mr.S.Senthilnathan and the learned Additional Public Prosecutor Mr.V.R.Balasubramanian, and the Legal Aid Counsel Mr.T.R.Ravi appearing for R2 & R3 and considered their rival submissions.

13.The revision has been preferred against the judgment of acquittal. The learned trial judge has assigned reasons for acquitting the accused as there are discrepancies seen in the complaint and the evidence of the injured witnesses P.W.1 & P.W.2. The learned trial judge has further observed that the overtact attributed against the accused are not in conformity with the evidence of the injured witnesses P.W.1 and P.W.2 and also with the complaint Ex.P.1. A perusal of the complaint-Ex.P.1 preferred by P.W.1 is that at the time of occurrence both A1 & A2 have abused her in filthy language since her goats have grazed in the land of the accused. Further in the complaint P.W.1 has stated that A2 has assaulted her with an aruval causing injuries and that A1 has caused injuries with an aruval on P.W.2. The fact that in Ex.P.1 the non mentioning of the specific overtact regarding in which part of the body of P.W.1 & P.W.2, A1 and A2 have inflicted injuries with aruval will in no way affect the case of the prosecution because Ex.P.1 cannot be an encyclopedia for the occurrence. P.W.2 and P.W.1 in their evidence before the Court as specifically deposed about the overtact of A1 & A2 which were corroborated by the medical evidence of P.W.6, who had issued Ex.P.2-copy of the accident register for the injuries sustained by P.W.2-Renuka and Ex.P.3-copy of the accident register for the injuries sustained by P.W.1. Under such circumstances, the findings of the learned trial Judge that the prosecution has failed to prove the guilt of the accused warrants interference from this Court.

14.In fine, the judgment of the trial Court in C.C.No.32 of 2002 on the file of the Judicial Magistrate, Thiruvarur, is hereby set aside and the matter is remanded back to the trial Court for fresh consideration according to law. The trial Court need not be

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carried away by the observation made by this Court in this order. The trial Court is directed to dispose of the matter within two months from the date of receipt of copy of this order.

The services rendered by the learned Legal Aid Counsel Mr.T.R.Ravi is recorded with appreciation. The Member Secretary of the Tamil Nadu Legal Services Authority is directed to pay a sum of Rs.3,000/- to the Legal Aid Counsel towards his remuneration.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

ssv

To,

1.The Judicial Magistrate,
Thiruvarur.

2.-do-The Chief Judicial Magistrate, Thiruvarur.

3. The Member Secretary
Tamilnadu Legal Service Authority
High Court, Madras.

4. The Public Prosecutor,
High Court, Madras.

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